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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 1988-LA4/78. *Dated, Trivandrum, 12th February 1978.*

The Kerala Private Forests (Vesting and Assignment) Amendment Bill, 1978 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly

DR. R. PRASANNAN,
Secretary,
Legislative Assembly.

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33/484/J.

Fifth Kerala Legislative Assembly
Bill No. 50

THE KERALA PRIVATE FORESTS (VESTING AND ASSIGNMENT) AMENDMENT BILL, 1978

A

BILL

to amend the Kerala Private Forests (Vesting and Assignment) Act, 1971.

Preamble.—WHEREAS it is expedient to amend the Kerala Private Forests (Vesting and Assignment) Act, 1971, for the purposes hereinafter appearing;

BE it enacted in the Twenty-ninth Year of the Republic of India as follows :—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Private Forests (Vesting and Assignment) Amendment Act, 1978.

(2) It shall be deemed to have come into force on the 25th day of August, 1977.

2. *Amendment of section 7.*—In section 7 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971) (hereinafter referred to as the principal Act),—

(a) in subsection (4), the words "but subject thereto, the decision of the Tribunal on any matter within its jurisdiction shall be final and conclusive" shall be, and shall be deemed always to have been, omitted;

(b) after subsection (4), the following subsection shall be, and shall be deemed always to have been, inserted, namely :—

"(4A) Subject to the provisions of subsection (4) and section 8A, the decision of the Tribunal on any matter within its jurisdiction shall be final and conclusive."

3. *Amendment of section 8.*—In section 8 of the principal Act, for subsection (3), the following subsection shall be, and shall be deemed always to have been, substituted, namely:—

"(3) If the Tribunal decides that any land is not a private forest or that a private forest or portion thereof has not vested in the Government and—

(a) no appeal has been preferred against the decision of the Tribunal within the period specified therefor; or

(b) such appeal having been preferred has been dismissed by the High Court,

the custodian shall, as soon as may be after the expiry of the period referred to in clause (a) or, as the case may be, after the date of the order of the High Court dismissing the appeal. restore possession of such land or private forest or portion, as the case may be, to the person in possession thereof immediately before the appointed day.".

4. *Insertion of new section 8A.*—After section 8 of the principal Act, the following section shall be, and shall be deemed always to have been, inserted, namely:—

"8A. *Appeal to the High Court.*—(1) The Government or any person objecting to any decision of the Tribunal may, within a period of sixty days from the date of that decision, appeal against such decision to the High Court:

Provided that the High Court may admit an appeal preferred after the expiration of the period of sixty days aforesaid if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of one hundred rupees.

(3) On receipt of an appeal under sub-section (1), the High Court may, after giving the parties a reasonable opportunity of being heard, either in person or by a representative,—

(a) confirm or cancel the decision of the Tribunal appealed against; or

(b) set aside such decision and remand the case to the Tribunal for decision after such further inquiry as may be directed; or

(c) pass such other orders as it may think fit.

(4) If the High Court decides that any land is not a private forest or that a private forest or portion thereof has not vested in the Government, the custodian shall, as soon as may be, restore possession of such land or private forest or portion, as the case may be, to the person in possession thereof immediately before the appointed day.

(5) Every order passed in appeal under this section shall be final.".

5. *Amendment of section 13.*—In section 13 of the principal Act, the words "Except as otherwise provided in this Act" shall be, and shall be deemed always to have been, inserted at the beginning.

6. *Transitory provisions.*—Notwithstanding anything contained in any law, or in any judgment, decree or order of any court, the Government or any person objecting to any decision of the Tribunal constituted under section 7 of the principal Act, made at any time before the commencement of this Act may, within a period of sixty days from such commencement, appeal to the High Court against such decision, and the provisions of sub-sections (2) to (5) (both inclusive) of section 8A of the principal Act as amended by this Act shall apply in respect of such appeal.

7. *Repeal and saving.*—(1) The Kerala Private Forests (Vesting and Assignment) Amendment Ordinance, 1977 (14 of 1977), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance or under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under this Act or, as the case may be, under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

Sub-section (1) of section 8 of the Kerala Private Forests (Vesting and Assignment) Act, 1971, provides that where any dispute arises as to whether any land is a private forest or not or as to whether any private forest or portion thereof has vested in the Government or not, the person who claims that the land is not a private forest or that the private forest has not vested in the Government may apply to the Tribunal constituted under section 7 of the Act for decision of the dispute. There is no provision in the Act for filing appeals against the decisions of the Tribunal. According to sub-section (4) of section 7 of the Act, the decision of the Tribunal shall be final and conclusive.

2. Under article 227 of the Constitution, as it stood before its amendment by the Constitution (Forty-second Amendment) Act, 1976, the High Court had superintendence over all tribunals and therefore the High Court could entertain writ petitions from the orders of tribunals and interfere with such orders. By the amendment to article 227 by the Constitution (Forty-second Amendment) Act, 1976, which came into [illegible] the 1st February, 1977, the power of superintendence of the Hig[illegible] tribunals have been taken away. Some writ petitio[illegible] orders of the Forest Tribunals had been filed before the High[illegible] the 1st February, 1977. After the 1st February, 197[illegible] against the adverse orders of the Tribunals were being [illegible] Court under article 226 of the Constitution. U[illegible] Constitution as amended by the Constitution (Fo[illegible] Act, the jurisdiction of the High Court to revie[illegible] very limited. Apart from this, clause (3) of [illegible] read with subsections (1) and (2) of sectio[illegible] second Amendment) Act, 1976, bars [illegible]

writ petition under article 226, if there is any other remedy available to the petitioner except in cases where the petitioner's fundamental rights are violated. When the orders passed by the Forest Tribunals go against the State, there is no question of violation of any fundamental right and hence the High Court will entertain a writ petition against the orders of the Forest Tribunals only when there is no other remedy open to the petitioner.

3. Under article 136 of the Constitution, the Supreme Court has discretion to entertain appeals from the orders passed by any tribunal within the territory of India. In Regent] Estates Ltd. and another Vs. Second Labour Court and others (81 C.W.N. 777), the Calcutta High Court has held that a remedy by way of an application for special leave under article 136 of the Constitution to the Supreme Court would come within the purview and mischief of "other remedy" as used in clause (3) of article 226 of the Constitution. The question has not yet been raised before the Kerala High Court. However, it was considered possible that the question might be raised, and if the Kerala High Court agreed with the Culcutta High Court, all the writ petitions filed by the Government would be dismissed and the Government would not be able to question the validity of any of the decisions of the Forest Tribunals in the High Court. In that case, the only remedy open to the Government will be to file an appeal for special leave before the Supreme Court under article 136 of the Constitution. In most of the cases it is not likely that special leave would be granted, because the decisions of the Forest Tribunals mainly involve questions of fact.

4. A large number of cases were decided against the State by the Forest Tribunals, involving large extents of vested forest lands and if a remedy is not provided for the State to get such decisions reversed, large extents of private forests would be lost. Hence it was felt necessary to amend the Kerala Private Forests (Vesting and Assignment) Act, 1971, providing for appeals from the decisions of the Forest Tribunals to the High Court.

5. Since the Legislative Assembly was not in session and the matter was ver[illegible]gent, the Kerala Private Forests (Vesting and Assignment) Am[illegible] Ordinance, 1977 (14 of 1977), was promulgated by the [illegible]hieve the above object. The Bill seeks to replace the Ordi- [illegible]t of the State Legislature.

FINANCIAL MEMORANDUM

[illegible]ovide for the filing of appeals before the High Court [illegible]d other persons against decisions of Tribunals [illegible]ala Private Forests (Vesting and Assignment) [illegible]ust, 1977 [the date of commencement of the [illegible]d Assignment) Amendment Ordinance, [illegible]d in the High Court, for which an

expenditure of Rs. 69,160 has been incurred. About 118 appeals will have to be filed in the High Court immediately for which the estimated expenditure will be about Rs. 30,680.

2. The exact number of appeals that may have to be filed in future and the exact amount of expenditure that may have to be incurred on that account cannot now be estimated with any degree of accuracy.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (2) of section 8A proposed to be inserted by clause 4 of the Bill seeks to empower Government to prescribe the form of appeal and the manner in which the appeal shall be verified. These are matters of administrative and procedural nature. Further, the rules to be made for the purposes shall be subject to the scrutiny of the Legislative Assembly. The delegation of Legislative power is therefore of a normal character.

KANTHALOT KUNHAMBU